

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary  
Immediate Suspension of the Family  
Child Care License of Linda Hegerman

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on January 16, 2008, in the Ramsey County Courthouse, 15 West Kellogg Blvd., Room 42, St. Paul, MN 55102. The OAH record closed at the conclusion of the hearing that day.

David F. MacMillan, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102-1556, appeared for the Department of Human Services (Department) and the Ramsey County Community Human Services Department (County). Jessica E. Schwie, Attorney at Law, Jardine, Logan & O'Brien, 8519 Eagle Point Boulevard, Suite 100, Lake Elmo, MN 55042, appeared on behalf of the Licensee, Linda Hegerman.

**STATEMENT OF ISSUE**

Should the temporary immediate suspension of the Licensee's family child care license remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in her care?

The Administrative Law Judge concludes the temporary immediate suspension should remain in effect pending a final decision by the Commissioner.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. The Licensee, Linda Hegerman, has engaged in licensed family child care for approximately ten years. She is currently licensed as a class C-3 provider and, prior to 2005, was licensed as a class C-1 provider.<sup>[1]</sup>

2. The Licensee is married to Gene Hegerman. Mr. Hegerman retired from a position with the U.S. Postal Service in approximately February of 2004. Although Mr. Hegerman has not been employed outside the home since his retirement, he has served as a helper in the Licensee's child care since approximately 2005. Previous background studies have been requested and submitted by the County with respect to Mr. Hegerman and he has received clearance to assist in the child care operation.<sup>[2]</sup>

3. The Licensee's child care is located at 1471 Iglehart Avenue West, St. Paul, Minnesota. That property is owned solely by Mr. Hegerman. The Licensee and Mr. Hegerman jointly own another property in Hector, Minnesota.<sup>[3]</sup>

4. In late November or early December 2007, Florence Stafford, a Ramsey County licensing worker, received a telephone call from the Ramsey County child protection intake area informing her that a child enrolled in the Licensee's child care ("Child No. 2") had made an allegation that Mr. Hegerman had abused her. Ms. Stafford thereafter received a written report issued by the Midwest Children's Resource Center (MCRC) on November 21, 2007, regarding this sexual abuse allegation.<sup>[4]</sup>

5. After the County received the MCRC report regarding Child No. 2 and consulted with the Department of Human Services, the County decided to recommend that the Licensee's child care license be immediately suspended. By letter to the DHS dated December 5, 2007, the County recommended that the DHS order a temporary immediate suspension of the Licensee's license. The County attached a copy of the MCRC report to its recommendation.<sup>[5]</sup>

6. By letter dated December 6, 2007, the DHS notified the Licensee that it was immediately suspending her license to provide family child care. The letter indicated that, "[d]ue to the serious nature of the report under investigation, Ramsey County Human Services Department and St. Paul Police Department cannot ensure the safety of the persons served in your program." The Order also stated that the Commissioner of the DHS "finds that the health, safety, and rights of children in your care are in imminent risk of harm" and informed the Licensee of her right to appeal the suspension order.<sup>[6]</sup> The Licensee filed a timely appeal of the Temporary Immediate Suspension Order issued by the Department.

7. On December 12, 2007, the County served a copy of the Notice of and Order for Hearing and attachments on the Licensee by mail. The Notice scheduled a hearing to take place on January 16, 2008.<sup>[7]</sup>

8. When Ms. Stafford returned to the office on January 10, 2008, after a two-week vacation, she learned that two other child care children ("Child No. 1" and "Child No. 3") had also alleged that Mr. Hegerman had sexually abused them. She received reports relating to those children from a County child protection worker on approximately January 11, 2008.<sup>[8]</sup>

9. Prior to issuance of the Temporary Immediate Suspension Order, Lynn Guidry worked in the Licensee's child care 40 to 50 hours per week. Ms. Guidry's daily work hours are typically 6:00 a.m. to 5:00 p.m. The standard hours during which the Licensee's child care operates are approximately 6:00 a.m. to 6:00 p.m. If the Licensee's license is reinstated, Ms. Guidry intends to resume working at the Licensee's child care home, following the same hours. She is willing to cooperate with the County and DHS and report whether or not Mr. Hegerman has been present during child care operations.<sup>[9]</sup>

10. The Licensee and Mr. Hegerman have been separated since approximately January 2, 2008. He is currently living in their second home located in Hector, Minnesota.

11. The Licensee has consulted with an attorney who has prepared papers to initiate a formal proceeding for legal separation from her husband. The Licensee expected that the papers would be filed on January 17, 2008. The Licensee ultimately intends to commence dissolution proceedings.

12. If her child care license is reinstated, the Licensee is willing to cooperate with the County and State to ensure that Mr. Hegerman does not have access to the Iglehart home during day care operations and report any attempt by Mr. Hegerman to gain access.<sup>[10]</sup>

13. The Licensee and Mr. Hegerman have been given custody of their two grandchildren, who are 8 and 10 years old, under an 18-month temporary license, and hope to obtain permanent custody. The temporary license will expire in approximately nine months. Since March 2007, two County placement workers have visited the Licensee's home twice a week to check on the safety of the grandchildren. They typically tell the Licensee in advance when they are coming. In addition, prior to the suspension of her license, a food program representative made unannounced visits once a week and Ms. Stafford made occasional unannounced visits.<sup>[11]</sup>

14. Several parents of children enrolled in the Licensee's child care have contacted the Licensee to tell her that they would like to have her license reinstated so that they can return their children to her care.<sup>[12]</sup> In addition, the Licensee submitted five letters from former day care parents expressing support for her child care, complimenting the fun and nurturing atmosphere at the home and indicating that their children enjoyed spending time there.<sup>[13]</sup> The Licensee also submitted a letter from Marcia A. Bennett, Ph.D., LP, a psychologist who works with her grandchildren. Dr. Bennett stated that she had observed the Licensee and her husband with their grandchildren before and after sessions and had also met with them to discuss parenting issues. She indicated that she had never observed Mr. Hegerman to be aggressive but only calm and gentle in his interactions with his grandchildren.<sup>[14]</sup>

15. The Licensee has used and will continue to use audio baby monitors in the three bathrooms in her home, as well as in the upstairs and downstairs playrooms and the bedrooms. If her license is reinstated, she is considering installing a video monitoring surveillance system throughout her home.

### **CONCLUSIONS OF LAW**

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2006).

2. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.<sup>[15]</sup>

3. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings shall be limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>[16]</sup>

4. The Commissioner demonstrated that reasonable cause exists to believe that the conduct of another poses an imminent risk of harm to the health, safety, or rights of persons served by the day care program.

5. The reasons for these Conclusions are expressed in the Memorandum that follows, and the Administrative Law Judge incorporates that Memorandum into these Conclusions.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the temporary immediate suspension of Linda Hegerman's family child care license.

Dated: January 23, 2008

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared).

## **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten working days from the close of the record.<sup>[17]</sup> The Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail pursuant to Minn. Stat. § 14.62, subd. 1 (2006).

## **MEMORANDUM**

The Commissioner has the burden of showing that there is reasonable cause to believe that the license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>[18]</sup> The reasonable cause burden is modest, presumably to ensure that vulnerable children are protected until there can be a full hearing and final determination of any possible licensing sanction under Minn. Stat. § 245A.08.

Based upon the written reports of the MCRC introduced by the Department during the hearing, it appears that three young children who were enrolled in the Licensee's day care have made statements that, if true, could support the conclusion that Mr. Hegerman engaged in improper sexual contact

with them. The child protection and criminal investigations are on-going, and the Department has not yet decided whether to impose a licensing sanction.<sup>[19]</sup> These reports provide an adequate basis to support a finding that reasonable cause exists to believe that actions of other individuals in the home pose an imminent risk of harm to the health, safety, and rights of day care children.

During the hearing, the Licensee argued that Mr. Hegerman no longer poses a risk of harm because they are now separated. She testified that she was going to initiate legal separation proceedings on the day following the hearing, and indicated that it was likely that the district court would issue an order of legal separation within two to three weeks thereafter. She also testified that she eventually intends to file for dissolution of the marriage. The Licensee pointed out that she is already subject to frequent home visits by various County workers due to having temporary custody of her grandchildren. She is exploring the installation of video surveillance equipment if the suspension is lifted. In addition, the Licensee and a full-time employee at the day care attested to their willingness to cooperate with the County and DHS and report any attempt by Mr. Hegerman to access the home.

However, the Licensee acknowledged that Mr. Hegerman is the sole owner of the home on Iglehart that she wishes to continue to use for day care. There is no formal order at the present time that precludes Mr. Hegerman from entering that home. The fact that Mr. Hegerman continues to have authority to enter the Iglehart home at any time precludes a finding that he no longer poses a risk of imminent harm to the children. Under these circumstances, the Administrative Law Judge is compelled to find that the Order of Temporary Immediate Suspension should remain in effect at the present time.

It is evident that the Licensee wishes to protect her grandchildren and her day care children from possible harm, and that she has taken several steps towards assuring that outcome. However, the steps she has taken are not yet sufficient to ensure that Mr. Hegerman will be unable to access the day care home. Should the Licensee obtain a court order after issuance of this report that restricts Mr. Hegerman's access to the home, a different conclusion may be warranted. The Judge encourages the Commissioner to allow the Licensee to supplement the record in this proceeding with any such order.

**B. L. N.**

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- [1] Testimony of Linda Hegerman.
- [2] Testimony of Florence Stafford, L. Hegerman.
- [3] Testimony of L. Hegerman.
- [4] Exs. 1, 2; Testimony of F. Stafford. ALJ Ex. 1, filed under seal, identifies Children No. 1, 2, and 3 by name and date of birth.
- [5] Ex. 2; Testimony of F. Stafford.
- [6] Ex. 3.
- [7] See Notice of and Order for Hearing and attached Affidavit of Service by U.S. Mail.
- [8] Testimony of F. Stafford.
- [9] Testimony of L. Guidry.
- [10] Testimony of L. Hegerman.
- [11] Testimony of L. Hegerman.
- [12] Testimony of L. Hegerman.
- [13] Exs. 8-12.
- [14] Ex. 7.
- [15] Minn. Stat. § 245A.07, subd. 2
- [16] *Id.*
- [17] Minn. Stat. § 245A.07, subd. 2a(b).
- [18] Minn. Stat. § 245A.07, subd. 2.
- [19] Although the DHS's Temporary Immediate Suspension Order was based upon the allegations made by Child No. 2, the County was permitted to provide evidence in this proceeding relating to the later-discovered allegations of sexual abuse made by other children because such evidence could tend to corroborate the primary allegation that led to the Order for Temporary Immediate Suspension and because such evidence may be probative with respect to whether the Licensee's husband continues to pose an imminent risk of harm.